

Government of the District of Columbia

ZONING COMMISSION



ZONING COMMISSION ORDER NO. 649

Case No. 88-30C

(Consolidated PUD @ 4th & K Sts., N.W.)

February 12, 1990

Pursuant to notice, a public hearing of the Zoning Commission for the District of Columbia was held on February 23, 1989, to consider the application of the Massachusetts Crescent Limited Partnership requesting consolidated review and approval of a planned unit development, for lots 29 and 30 in Square 516. The public hearing was conducted in accordance with the contested case provisions of 11 DCMR 3022.

FINDINGS OF FACT

1. Applicant requests approval of a consolidated planned unit development ("PUD"). No change of zoning is requested.
2. The site of the application are Lots 29 and 30 in Square 516, located at the northeast corner of the square at 400 K Street, N.W.
3. As presently before the Commission, the applicant proposes to develop a mixed-use project consisting of a residential component, a general office component, and a retail component. The applicant proposes to provide 180-199 on site residential units with a floor area ratio ("FAR") of 3.20, .58 FAR devoted to retail, .06 FAR devoted to day care, 4.56 FAR devoted to commercial, and .10 FAR devoted to service/loading. The total FAR of the project shall not exceed 8.5. The entire structure shall contain approximately 462,995 square feet gross floor area. The applicant proposes to devote approximately 31,400 square feet to retail, 3,200 square feet to day care, 248,450 square feet to commercial, 174,000 square feet to residential and 5,545 square feet to Service/Loading. The site will also provide underground parking for 240 cars.
4. The subject site is located within the Mount Vernon Square East and Judiciary Square areas. It abuts a 15 foot wide public alley on the west which divides the

square connecting K and I Streets. It also abuts a 30 foot alley on the south. The site is paved with an all-weather impervious surface and used as a parking lot with access from K Street.

5. The PUD site is bordered by K Street to the north, 5th Street to the west, 4th Street to the east, with I Street to the south. The subject property is in the northeast corner of the square, at the intersection of 4th and K Streets. To the south of the property is the Chester Arthur Building. The site encompasses a total land area of approximately 54,370 square feet and is presently used as a surface parking lot. The site is zoned HR/C-2-C, and no changes to this zoning are proposed.
6. Under the current zoning, HR/C-2-C, development with a mixture of commercial and residential uses is permitted. The maximum FAR of the district is 6.0. The entire 6.0 FAR can be used for apartment or residential use, but only 2.0 FAR is permitted for other uses.
7. The Hotel Residential (HR) Incentive District provides an incentive to develop an adequate number of hotels within a convenient distance of the Convention Center and to "encourage housing development in furtherance of Downtown planning goals and housing needs in the District". Zoning Commission Order No. 334, March 12, 1981. A building erected in the HR District which contains an apartment house or hotel, can exceed the height restrictions of the underlying Zone provided that it: does not exceed 130 feet (pursuant to the 1910 Height Act); contains a minimum FAR of 2.0 for hotel or apartment use; and does not project above a plane drawn at a 45 degree angle from a line located 110 feet above the right-of-way line of the street. An FAR of 8.5 is permitted in an HR District. The HR District is mapped in combination with other Districts.
8. Under the PUD process of the Zoning Regulations, Chapter 24 of 11 DCMR, the Zoning Commission has the authority to impose development conditions, guidelines, and standards which may exceed or be lesser than the matter-of-right standards identified above.
9. The Generalized Land Use Element Map of the Comprehensive Plan shows the area of the subject PUD as within an area designated for mixed-use high density commercial and high density residential uses. The proposed mixed-use development is consistent with the land use goals and policies established in the Land Use Element of the Plan.

10. The zoning pattern in the area includes: the southwest corner of the subject square is zoned HR/SP-2; to the east across 4th Street is HR/C-2-C; south of I Street, the zoning is HR/SP-2, the north side of K Street for a depth of 160 feet between 3rd and 6th Streets is zoned HR/C-2-C; other categories in the area include: HR/C-3-C, C-3-C, HR/R-5-D, C-2-C and C-2-A.
11. The proposed project would have a maximum building height of 130 feet.
12. The applicant through testimony presented at the public hearing, indicated that the primary purposes of the project are to provide a vital mixed-use development project providing privately subsidized housing in presently underutilized areas of Downtown. To achieve these purposes, the proposed PUD has been carefully designed to achieve the following basic objectives:
 - a. Develop a mixed-use building of superior architectural design that will enhance and complement the character of the neighborhood and provide a positive presence for continued future mixed-use development in the Downtown area.
 - b. Create a substantial number of residential uses (180-199) at market rate, as well as low and moderate income dwelling units, in an in-town location.
 - c. Convert an underutilized site at an important location in the Downtown into one that will make a far greater contribution to the immediate area and the City.
 - d. Provide an ideal development of appropriate use and density for such a prime location, consistent with the goals and objectives of the Comprehensive Plan, particularly in the Downtown area.
 - e. Enhance the character of the neighborhood and stabilize property values.
 - f. Design the project in a manner that will prevent any adverse impact on existing traffic conditions through a careful analysis of existing traffic conditions and the potential traffic and parking impacts of the proposed development.
 - g. Maximize the achievement of the PUD goals by providing benefits that would not occur under a matter-of-right project.
 - h. Develop a project which is consistent with the

Comprehensive Plan including the land use map which designates the property for mixed-use high density commercial and high density residential development.

13. The applicant submitted the following as special amenities that the PUD would provide within the project:
 - a. The provision of a significant amount of new housing. This commitment to provide housing will address the City's interest in providing housing opportunities in the Downtown, and the concerns about the housing needs of low and moderate income persons;
 - b. A commitment to seek neighbor-oriented retail establishments as tenants in the building and to offer incentives to these businesses to locate in the new building. The applicants have met with area citizens for the past year to define clearly the retail needs of the neighborhood. In working with the community, the applicants will insure that every effort is made to meet the neighborhood's retail needs;
 - c. Replacement of an existing parking lot with a well-designed mixed-use building containing 240 parking spaces;
 - d. Development of a project of superior design that will include a significant residential and retail component and provide a critical mass for future mixed-use development in the Downtown area consistent with the Comprehensive Plan;
 - e. A transportation management plan, involving a coordinated strategy to reduce the traffic impact of project on the neighborhood streets and the encouragement of mass transportation;
 - f. Improvements to public space surrounding the building;
 - g. A day care center; and
 - h. Economic benefits to the City and to City residents through:
 - (1) Increased real estate tax revenues;
 - (2) Commitment to jobs for minorities in the

construction of the project revise through agreement between the applicant and the Minority Business Opportunity Commission; and

(3) First source employment for construction jobs.

14. It is evident that at this time the financial feasibility of a matter-of-right project at the site may be problematic, and this circumstance is not without relevance to the consideration of this application, but the Commission is persuaded that this centrally-located site does have substantial value, as well as potential for substantially increased value, for residential use.
15. The District of Columbia Office of Planning, by report dated February 13, 1989, recommended that the application be denied. The OP report noted that the project needs a stronger residential component that is presently provided at 3.2 FAR. The OP noted that a residential FAR of 4.0 should be the minimum goal in the project. The report also noted that a 50-50 housing/commercial split was desirable for the site. At the public hearing, OP took the position that it would not then support nor oppose the project. It noted that it had not reached a conclusion with which it was comfortable, and that further negotiations with the applicant were necessary. OP expressed concern that the applicant's introduction of large commercial office uses to the area would arguably establish the area as commercial in nature, thus precluding future residential growth in the area.
16. Representatives of Advisory Neighborhood Commission 2C testified at the applicant's public hearing. The ANC stated that it overwhelmingly supports applicant's proposed development. It also noted particular satisfaction with the applicant's day care center proposal, and stressed that the facility be made available to residents of the building.
17. The Office of Business and Economic Development (OBED) submitted a report dated March 24, 1989. The report noted that the market for downtown housing will take several years to mature because it is in its beginning stages. It stated that, in light of this fact, a prudent developer would either avoid the risks in the undefined market or, alternatively, seek to offset the risk through commercial office subsidies.

OBED's report concluded that if the District forces housing in a premature downtown market, it would be a "loss leader." In that event, states the report, the

District would either have to sacrifice intensive housing during this stage or offer direct subsidies to offset the developer's risk.

18. The Department of Housing and Community Development (DHCD) submitted a report dated February 10, 1989 to the Office of Planning regarding the PUD project. DHCD noted its support for the project.
19. The Department of Recreation, by letter dated February 7, 1989, stressed the importance of providing adequate recreational facilities in the subject area. The letter also noted that existing facilities in the area are overburdened, and that the Department was willing to meet with the applicant to discuss solutions.
20. By letter dated February 16, 1989, the Department of Recreation stated that it had met with the applicant and his architect, and that the applicant had agreed to submit a preliminary site plan to the agency's staff specifying playground equipment, seating areas and shelter provided by trees or structures. The agency also reserved the right to review applicant's final equipment proposals before the Zoning Commission approves the final site plan.
21. The Department of Recreation, by letter dated March 13, 1989, noted that the applicant had presented to it site plans for both PUD projects. The Department stated that the plans for the 4th and K Street PUD were generally acceptable.
22. The Metropolitan Police Department by letter dated February 14, 1989, stated that it had no objection to the applicant's project and that it would provide any additional police protection necessary.
23. The D.C. Department of Public Works (DPW), by report dated March 16, 1989, addressed the transportation, water and sewer elements of the PUD. Regarding transportation, the DPW report noted that the traffic generated by the applicants proposed development and other projects can be managed. The report also noted that the 231 parking spaces provided by the applicant should be adequate if the applicant implements a shared parking program. Regarding water and sewer issues, the DPW report stated that the 8 inch diameter water main on K Street and the 6 inch diameter water main on 4th Street supply adequate water service to the proposed project.
24. The D.C. Fire Department, by letter dated February 22,

1989, stated that the proposed development does not create any major or undue hardships on the Fire Department. The agency has no objections so long as D.C. Construction Codes are followed as they relate to fire safety.

25. D.C. City Councilman John Wilson filed a letter dated February 6, 1989 in support of the applicant's proposed PUD.
26. D.C. City Councilman John Ray filed a letter dated February 6, 1989 supporting the applicant's proposed PUD.
27. The Commission finds that the principal amenities to be supplied are the support for additional housing in the Downtown area, the retail uses, and the day care center, and that these amenities have substantial merit.
28. The Zoning Commission concurs with the position of the applicant, ANC-2C and others, and believes that the PUD proposal is an appropriate development for the site.
29. The proposed action of the Zoning Commission to approve the application with conditions was referred to the National Capital Planning Commission (NCPC) under the terms of the District of Columbia Self-Government and Governmental Reorganization Act. The NCPC, by report dated January 5, 1990, indicated that the PUD would not adversely affect the federal establishment or other federal interests in the National Capital or be inconsistent with the Comprehensive Plan for the National Capital.

CONCLUSIONS OF LAW

1. The Planned Unit Development process is an appropriate means of controlling development of the subject site, because control of the use and site plan is essential to ensure compatibility with the neighborhood.
2. The development of this PUD carries out the purposes of Chapter 24 to encourage the development of well-planned residential, commercial and mixed-use developments which will offer a variety of building types with more attractive and efficient overall planning and design not achievable under matter-of-right development.
3. The development of this PUD is compatible with city-wide goals, plans and programs, and is sensitive to environmental protection and energy conservation.
4. Approval of this application is not inconsistent with

the Comprehensive Plan for the National Capital.

5. The approval of this application is consistent with the purposes of the Zoning Act.
6. The proposed application can be approved with conditions which ensure that the development will not have an adverse affect on the surrounding community, but will enhance the neighborhood and ensure neighborhood stability.
7. The approval of this application will promote orderly development in conformity with the entirety of the District of Columbia zone plan, as embodied in the Zoning Regulations and Map of the District of Columbia.
8. The Zoning Commission has accorded to the Advisory Neighborhood Commission 2C the "great weight" to which it is entitled.
9. Pursuant to D.C. Code Sec. 1-2531 (1987), Section 267 of D.C. Law 2-38, the Human Rights Act of 1977, the applicant is required to comply fully with the provisions of D.C. Law 2-38, as amended, codified as D.C. Code, Title 1, Chapter 25 (1987), and this order is conditioned upon full compliance with those provisions. The failure or refusal of applicant to comply with any provisions of D.C. Law 2038, as amended, shall be a proper basis for the revocation of this order.

DECISION

In consideration of the Findings of Fact and Conclusions of Law herein, the Zoning Commission for the District of Columbia hereby orders APPROVAL of this application for consolidated review of a planned unit development for Lots 29 and 30 in Square 516, located at the northeast corner of the Square at 400 K Street, N.W. The approval of this planned unit development is subject to the following guidelines, conditions and standards:

1. The Planned Unit Development ("PUD") shall be developed in accordance with the plans prepared by AEPA Architects Engineers, P.C. marked as Exhibit Nos. 59, 56, 48, 21 and 7 of the record as modified by the guidelines, conditions and standards of this order.
2. The project shall be developed as a mixed-use project consisting of a residential component, a general office component, and a retail component.
3. The project shall have 180-199 on site residential units.

4. The floor area ratio ("FAR") of the project shall not exceed 8.5 (.58 FAR devoted to retail, .06 FAR devoted to day care, 4.56 FAR devoted to commercial, .10 FAR devoted to service/loading, and 3.20 FAR devoted to residential use).
5. The height of the building shall not exceed one hundred and thirty (130) feet.
6. The total lot occupancy of the project shall not exceed 88 percent.
7. Antennas may be permitted on the roof of the building, subject to the Zoning Regulations.
8. The applicant shall provide a minimum of 240 parking spaces, in conformance with C-2-C provisions of the Zoning Regulations. The applicant shall provide a minimum of 49 spaces for residential use, 42 spaces for retail use and 149 spaces for office use. The applicant may provide the 149 office use parking spaces for residents.
9. The parking garage will be professionally managed to insure that convenient parking spaces are always readily available to residents of the project.
10. No hotel, motel, boarding house and private club, inn, hostel, bed and breakfast, tourist house, guesthouse, or other transient accommodation shall be conducted or permitted on the PUD site.
11. All leases for the apartment units shall be for a minimum of 12 months.
12. No apartment units shall be leased to any corporation partnership, association, joint venture, government agency, trust, estate, or the like.
13. The applicant has entered into a consultancy agreement with the Center City Community Corporation (Four C's). Four C's will be responsible for monitoring the applicant's compliance with the Minority Business Opportunity Commission and the Department of Employment Services agreements.
14. The applicant shall provide a child development center at the site at a rent per square feet of not less than ten dollars (\$10.00) below market rate for a period of not less than ten (10) years. Preference shall be given to the residents of the project and also to the residents and employees of the surrounding area.

15. The applicant shall coordinate its efforts with the D.C. Department of Public and Assisted Housing (DPAH) to provide twenty percent (20%) of the housing units for individuals with approved housing subsidies under the Tenant Assistance Program and Section 8 (or successor program). Additionally, the unit rent shall be available at \$50.00 to \$100.00 per month below market price for not less than a ninety (90) day period.
16. The applicant shall design the outdoor recreation space of the project in consultation with the Department of Recreation. This space shall be open to the residents of the project as well as residents of the surrounding community.
17. The applicant is granted flexibility in the final detailing of the building with respect to the following matters:
 - a. Varying the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, elevators, electrical and mechanical rooms so long as the variation do not change the exterior configuration or street facades of the building including the penthouse;
 - b. Varying the unit mix, provided that the completed building contains a minimum of 180 units;
 - c. Making minor adjustments in facade and window detailing, and emergency egress doors and ventilating grills;
 - d. Varying the location and type of exterior lighting fixtures;
 - e. Varying the species but not the size of plant materials;
 - f. Varying the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at time of construction, provided that the applicant shall submit its final selection of the exterior materials to the Zoning Commission for final approval, which the Commission may determine to grant without having a further public hearing.
 - g. Varying the arrangement of the parking spaces so long as a minimum of 240 parking spaces are provided;

18. The Zoning Commission reserves the discretion to determine the proceeding by which it will consider any matter submitted to it, pursuant to Paragraph "f" of Condition No. 17 of this order.
19. No building permit shall be issued for this Planned Unit Development until the applicant has recorded a PUD covenant in the land records office of the District of Columbia and satisfactory to the Office of the Corporation Counsel and the Zoning Regulations Division of the Department of Consumer and Regulatory Affairs (DCRA), which covenant shall bind the applicant and successors in title to construct on and use the PUD site in accordance with this order, and any amendments thereto, of the Zoning Commission.
20. The Zoning Secretariat shall not release the record of Case No. 88-30C to the Zoning Regulations Division until the applicant has filed a certified copy of the covenant in the record of the Zoning Commission.
21. The Planned Unit Development approved by the Zoning Commission shall be valid for a period of two years from the effective date of this order. Within that time, application must be filed for the building permit, as specified in 11 DCMR 2406.8 and 2407.1. Construction shall start within three years of the effective date of this order.
22. Pursuant to D.C. Code sec. 1-2531 (1987), Section 267, of Law 2-38, the Human Rights Act of 1977, the applicant is required to comply fully with the provisions of D.C. Law 2-38, as amended, codified as D.C. Code, Title 1, Chapter 25, (1987), and this order is conditioned upon full compliance with those provisions. Nothing in this order shall be understood to require the Zoning Regulations Division/DCRA to approve permits, if the applicant fails to comply with any provision of D.C. Law 2-38, as amended.


Voting of the Zoning Commission taken at the public meeting on October 16, 1989: 3-0 (John G. Parsons, Lloyd D. Smith, and Maybelle Taylor Bennett to approve, Tersh Boasberg and George M. White, not present, not voting). The guidelines, conditions and standards were approved by the Zoning Commission at its regular monthly meeting on November 13, 1989.

This order was adopted by the Zoning Commission at its regular monthly meeting on February 12, 1990: 3-0 (John G. Parsons, and Maybelle Taylor Bennett to approve, Lloyd D. Smith to approve by proxy, Tersh Boasberg and William Ensign not voting not having participated in the case.

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In accordance with the provisions of 11 DCMR 3028, this order is final and effective upon publication in the D.C. Register; that is on APR 13 1990.


MAYBELLE TAYLOR BENNETT
Chairperson
Zoning Commission


EDWARD L. CURRY
Executive Director
Zoning Secretariat

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